

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
The 4.9 GHz Band Transferred from)	WT Docket No. 00-32
Federal Government Use)	
)	

Reply Comments of the Industrial Telecommunications Association, Inc.

The Industrial Telecommunications Association, Inc. (ITA) hereby respectfully submits its reply comments in response to the Commission's *Second Report and Order and Further Notice of Proposed Rulemaking* (FNPRM) in the above-referenced matter.¹ The FNPRM seeks comment on eligibility for use of the 4.9 GHz band (4940-4990 MHz).² As discussed in more detail below, ITA believes that the 4.9 GHz band should be limited to public safety services, as defined under Section 337(f) of the Communications Act.³

I. Statement of Interest

ITA is a Commission-certified frequency advisory committee coordinating in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate

¹ See The 4.9 GHz Band Transferred from Federal Government Use, *Second Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 00-32 (rel. Feb. 27, 2002) (FNPRM).

² FNPRM at ¶ 31-38.

³ 47 U.S.C. § 337(f).

business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz.

ITA enjoys the support of a membership including more than 3,500 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

- Alliance of Motion Picture and Television Producers
- Aeronautical Radio, Inc.
- Associated Builders & Contractors, Inc.
- Florida Citrus Processors Association
- Florida Fruit & Vegetable Association
- National Mining Association
- National Propane Gas Association
- National Ready-Mixed Concrete Association
- National Utility Contractors Association
- New England Fuel Institute
- United States Telephone Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communication Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc.

II. Background

On February 27, 2002, the Commission released the FNPRM seeking comments on the appropriate eligibility requirements, *inter alia*, for use of the spectrum at 4.9 GHz.⁴ The FNPRM was released as a result of the comments filed on the original *Notice of Proposed Rulemaking* proposing to allocate the 4.9 GHz band for non-Government fixed and mobile operations in a

⁴ FNPRM at ¶ 2. While the FNPRM solicits comments on many issues at 4.9 GHz, ITA's comments will only focus on eligibility requirements for use of this spectrum.

manner that allows flexible use of the spectrum,⁵ and the *First Report and Order and Second Notice of Proposed Rule Making* (R&O/2nd NPRM), which sought comments on pairing the 4.9 GHz band with the 3650 MHz band.⁶ Many comments submitted to the Commission in response to the 2nd NPRM expressed either commercial or public safety interest, or a mix of the two, in the 4.9 GHz band.

III. Discussion

ITA applauds the Commission's decision to designate the 4.9 GHz band for public safety use⁷ and we support the comments of the state, county and local governments, and their national associations, stating the need for additional public safety spectrum to take full advantage of emerging broadband technologies to perform critical safety of life services.⁸ Furthermore, ITA agrees with the majority of commentators that believe the Commission should restrict eligibility for the use of the 4.9 GHz band to "public safety services," as defined in Section 337(f) of the Communications Act.⁹

- (A) the sole or principle purpose of which is to protect the safety of life, health, or property;
- (B) that are provided

⁵ See The 4.9 GHz Band Transferred from Federal Government Use, *Notice of Proposed Rulemaking*, WT Docket No. 00-32 (rel. Feb. 29, 2000).

⁶ See The 4.9 GHz Band Transferred from Federal Government Use, *First Report and Order and Second Notice of Proposed Rulemaking*, WT Docket No. 00-32 (rel. Oct. 24, 2000) (R&O).

⁷ FNPRM at ¶ 23-30.

⁸ FNPRM at ¶ 23-24.

⁹ See Comments of The City of New York (New York City) at p. 4., Comments of The Public Safety Wireless Network Program (PSWN) at p. 4, Comments of The City of Phoenix, Arizona (Phoenix) at p.1, Comments of Association of Public-Safety Communications Officials International (APCO) at p. 4, Comments of National Public Safety Telecommunications Council (NPSTC) at p. 2, Comments of International Association of Chiefs of Police, Major Cities Chiefs Association, National Sheriffs' Association, Major County Sheriffs' Association at p. 2, and Comments of The International Association of Fire Chiefs, Inc. and International Municipal Signal Association (IACP, et.al.) at p. 2.

- (i) by State or local government entities; or
- (ii) by nongovernmental organizations that are authorized by a government entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.¹⁰

The Commission is correct to assert that this definition of public safety services would “generally limit uses of the spectrum to state and local emergency workers and non-governmental public safety providers authorized to provide public safety services by a governmental entity whose primary mission is to protect the safety of life, health, or property.”¹¹ Limiting eligibility, however, would not be misguided on the part of the Commission. As stated by the Association of Public-Safety Communications Officials International (APCO), “limiting the use of the band to traditional public safety entities would ensure that state and local emergency workers can perform their primary mission of protecting the safety of life, health or property in a timely manner.”¹² Moreover, the City of New York ties limited eligibility to more reliable communications. It states, “employing Section 337(f) will help ensure that the public safety community has sufficient, interference-free use of this new public safety spectrum at all times.”¹³ In light of our nation’s current and future spectrum needs for emergency services (*i.e.* responses to terrorism), we believe that limiting public safety access to emergency responders, namely, firefighters and law enforcement will advance the public interest.

¹⁰ 47 U.S.C. § 337(f).

¹¹ FNPRM at ¶ 31.

¹² APCO at p. 3.

¹³ New York City at p. 4.

Allowing access for private internal radio services, under Section 309(j)(2) of the Communications Act¹⁴, could indirectly limit the reaction time of emergency responders in the event that a responder had to first clear the spectrum of private, internal radio users in the band. The Commission, itself, noted that, “expanding the universe of users on this spectrum may result in congestion on the band, hindering the communications of emergency workers, and causing the traditional public safety users to compete for valuable spectrum.”¹⁵

Public safety entities may coordinate with private land mobile licensees in emergency situations using frequencies in the Part 90 bands below 900 MHz. While ITA would encourage public safety entities to reach sharing and capacity agreements with their private land mobile neighbors in these bands, we believe the 50 MHz of spectrum at 4.9 GHz will allow public safety licensees valuable opportunities to deploy emerging broadband and wideband technologies that advance the public interest for firefighting, policing and emergency response communications, without the threat of spectral competition in such critical situations.

There is often a need for communication, however, between public safety licensees and other local users in an emergency situation. As such, ITA agrees with the commenters suggesting that if a public safety licensee, after they have been allocated spectrum, wants to enter into a sharing agreement through a memorandum of understanding (or similar agreement) with another entity, they should be permitted to take such action.¹⁶ This opportunity, however, should be at the sole discretion of the public safety entity.

IV. Conclusion

¹⁴ 47 U.S.C. § 309(j)(2).

¹⁵ FNPRM at ¶ 34.

¹⁶ PSWN at p. 6, APCO at p. 5, New York City at p. 4, NPSTC at page 4, Phoenix at p. 2, IACP,

ITA suggests that the Commission allocate all 50 MHz of the spectrum at 4.9 GHz to public safety services, as defined in Section 337(f) of the Communications Act. This definition of public safety services will permit the most efficient use of the spectrum by traditional public safety licensees, without forcing them to compete for spectrum that could become congested otherwise.

Respectfully submitted,

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Date: August 7, 2002

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